

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANTHONY M. DURANTE,

Plaintiff,

v.

FAIRLANE TOWN CENTER,
et al.,

Defendants.

CIVIL ACTION NO. 03-73128

DISTRICT JUDGE JOHN CORBETT O'MEARA

MAGISTRATE JUDGE DONALD A. SCHEER

**ORDER DENYING PLAINTIFF'S MOTION
TO SUPPLEMENT THE RECORD**

Plaintiff's Motion to Supplement the Record was referred to the undersigned magistrate judge for hearing and determination. The parties appeared for hearing on December 20, 2005. Having reviewed plaintiff's motion, and having heard the arguments of counsel, I find that the same must be denied.

Federal Rule of Appellate Procedure 10(e)(2) allows correction of the record either by agreement of the parties, by order of the district court, or by order of the Court of Appeals. It is clear, however, from the language of the Rule and from the decisions of the United States Court of Appeals for the Sixth Circuit that "[t]he purpose of the Rule is to allow the [] court to correct omissions from or misstatements in the record for appeal, not to introduce new evidence in the Court of Appeals." "A party may not bypass the fact finding process of the lower court and introduce new facts in brief on appeal." Inland Bulk Transfer Co. v. Cummins Engine Co., 332 F.3d 1007, 1012 (6th Cir. 2003) (citations omitted).

Plaintiff seeks to add a state court misdemeanor trial transcript to the record of his civil case in the U. S. District Court. It is clear that the grant of summary judgment which plaintiff has appealed to the Circuit Court was not rendered in reliance upon the state court transcript. I am also satisfied that, had plaintiff submitted the transcript during the course of the litigation in this court, it would not have affected the district court judge's disposition of the summary judgment motion. Plaintiff is simply attempting to add new material that was never considered by the district court. Such a course is not permitted under the Rule.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Supplement the Record is denied.

s/Donald A. Scheer
DONALD A. SCHEER
UNITED STATES MAGISTRATE JUDGE

DATED: December 22, 2005

CERTIFICATE OF SERVICE

I hereby certify on December 22, 2005 that I electronically filed the foregoing paper with the Clerk of the Court sending notification of such filing to all counsel registered electronically. I hereby certify that a copy of this paper was mailed to the following non-registered ECF participants on December 22, 2005. **Paul Youngs.**

s/Michael E. Lang
Deputy Clerk to
Magistrate Judge Donald A. Scheer
(313) 234-5217